

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

Jon Reed Tollefson,

Plaintiff,

vs.

Wickham Corwin,

Defendant.

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Case No. 3:13-cv-53

REPORT AND RECOMMENDATION

Plaintiff Jon Reed Tollefson (“Tollefson”) filed a motion for default judgment pursuant to Rule 55 of the Federal Rules of Civil Procedure. (Doc. #12). Tollefson contends he is entitled to default judgment because the defendant failed to answer the complaint. Id.

Defendant timely filed a motion to dismiss the complaint which asserts defenses listed under Rule 12(b) of the Federal Rules of Civil Procedure. (Doc. #7). A motion raising Rule 12(b) defenses must be made before filing an answer. Fed. R. Civ. P. 12(b). If the court denies the motion to dismiss defendant must file a responsive pleading within fourteen days. Fed. R. Civ. P. 14(a)(4). Defendant has not failed to respond to the complaint.

The court recognizes that Tollefson contends the defendant’s motion to dismiss does not adequately address Tollefson’s complaint. However, the court will not make a recommendation on the merits of the motion to dismiss within the context of the instant motion. It is **RECOMMENDED** that Tollefson’s motion for default judgment (Doc. #12) be **DENIED**.

Dated this 24th day of September, 2013.

/s/ Karen K. Klein
Karen K. Klein
United States Magistrate Judge

NOTICE OF RIGHT TO OBJECT

Pursuant to Rule 72(a) and (b), Federal Rules of Civil Procedure, and District of North Dakota Local Court Civil Rule 72.1(D)(2) and (3), any party may object to this Report and Recommendation and by filing with the Clerk of Court no later than October 7, 2013, a pleading specifically identifying those portions of the Report and Recommendation to which objection is made and the basis of any objection. Failure to object or to comply with this procedure may forfeit the right to seek review in the Court of Appeals.